

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Bresniker et al.	Patent Application
Application No.:	10/678,464	Group Art Unit: 3689
Filed:	October 3, 2003	Examiner: Nguyen, T. T.
For:	RACK EQUIPMENT MANAGEMENT INFORMATION COORDINATION SYSTEM AND METHOD	

APPEAL BRIEF

Table of Contents

	<u>Page</u>
Real Party in Interest	1
Related Appeals and Interferences	2
Status of Claims	3
Status of Amendments	4
Summary of Claimed Subject Matter	5
Grounds of Rejection to be Reviewed on Appeal	10
Argument	11
Conclusion	29
Appendix – Clean Copy of Claims on Appeal	30
Appendix – Evidence Appendix	36
Appendix – Related Proceedings Appendix	37

I. Real Party in Interest

The assignee of the present invention is Hewlett-Packard Development Company,
L.P.

II. Related Appeals and Interferences

There are no related appeals or interferences known to the Appellants.

III. Status of Claims

Claims 1-20 are rejected. This Appeal involves Claims 1-20.

IV. Status of Amendments

All proposed amendments have been entered. An amendment subsequent to the Final Action has not been filed.

V. Summary of Claimed Subject Matter

Independent Claims 1, 8, and 17 of the present application pertain to embodiments associated with methods and a system described by the present application. Reference to text (by page and line numbers) of the present application and figure elements (by element reference number) of the present application that describe the claimed embodiments is provided below.

In Claim 1, “[a] computer-implemented rack equipment management information coordination method” is recited. This embodiment is depicted in and described with reference to Figures 1, 2A, 2B, 3, and 4. “[F]ormulating a rack equipment management plan that includes equipment management and usage policies and establishes an association between a rack equipment performance action and a trigger event,” as recited in Claim 1, is described at least by: page 8, lines 16-20; and step 110 of method 100 of Figure 1. “[S]aid formulating performed using a computer to analyze said equipment management and usage policies,” as recited in Claim 1, is described at least by: system 300 and rack equipment management plan module 322 of Figure 3; page 14, lines 1-25; computer system 400 of Figure 4; and page 15, lines 11-19. “[W]herein at least a portion of said equipment management and usage policies are automatically received by said computer from a customer database,” as recited in Claim 1, is described at least by: page 14, lines 5-8. “[W]herein said rack equipment management plan is a plan for managing rack equipment operating characteristics while said rack equipment is in operation,” as recited in Claim 1, is described at least by: page 8, lines 9-13 and 20-26; and page 14, lines 12-25. “[A]utomatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment,” as recited in Claim 1, is described at

least by: page 9, lines 1-11; step 120 of method 100 of Figure 1; Figure 2A, items 211-214; page 9, lines 16-26; system 300 and description retrieval module 321 of Figure 3; computer system 400 of Figure 4; and page 15, lines 11-19. “[W]herein said rack equipment description information comprises an identification of equipment type of said at least one component,” as recited in Claim 1, is described at least by: page 9, lines 2-11. “[S]toring, with said computer, said rack equipment description information and said rack equipment management plan,” is described at least by: page 9, line 13 - page 10, line 12; step 130 of method 100 of Figure 1; Figure 2A, items 211-214; equipment description information repository 311 and management plan information repository 312, and repository management component 320 of system 300 of Figure 3; page 10, line 14 - page 13, line 5; memory 452 and bulk storage 454 of computer system 400 of Figure 4; and page 15, lines 19-22.

In Claim 8, “[a] rack equipment information coordination system” is recited. This embodiment is depicted in and described with reference to at least Figures 3 and 4. “[A]n equipment description information repository for tracking equipment description information, wherein said equipment description information comprises an identification of equipment type of at least one component of a rack of equipment, said equipment description information repository comprising physical bulk storage coupled with a computer,” as recited in Claim 8, is described at least by: system 300 and equipment description information repository 311 of Figure 3; page 10, line 14 - page 11, line 17; page 9, lines 2-11; memory 452 and bulk storage 454 of computer system 400 of Figure 4; and page 15, lines 19-22. “[A] management plan information repository for tracking rack equipment management plan information, said management plan information repository comprising a second physical bulk storage coupled with said computer, wherein said rack equipment management plan

information is used for managing rack equipment while said rack equipment is in operation and is configured for directing a change in operating characteristics of said rack equipment,” as recited in Claim 8, is described at least by: system 300 and management plan information repository 312 of Figure 3; page 10, line 14 - page 11, line 2; page 11, line 19-page 12, line 14; memory 452 and bulk storage 454 of computer system 400 of Figure 4; and page 15, lines 19-22. “[A] coordination component for coordinating said equipment description information and said rack equipment management plan information, said coordination component implemented by a processor of said computer which is programmed with instructions for performing said coordinating,” as recited in Claim 8, is described at least by: system 300 and cross indexing component 313 of Figure 3; page 10, line 14-page 11, line 2; page 12, lines 4-14; computer system 400 and processor 451 of Figure 4; and page 15, lines 11-19. “[A] repository management component that controls automatic retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment,” as recited in Claim 8, is described at least by: system 300 and repository management component 320 of Figure 3; page 10, line 23-page 11, line 2; and page 12, lines 16-25. “[W]herein said repository management component also controls population of said equipment description information into said equipment description information repository and population of said management plan information into said management plan information repository,” as recited in Claim 8, is described at least by: page 12, lines 16-19. “[S]aid repository management component implemented by said processor of said computer which is programmed with instructions for performing said automatic retrieval and said population,” as recited in Claim 8, is described at least by: computer system 400 and processor 451 of Figure 4; and page 15, lines 11-19.

In Claim 17, “[a] computer system is recited. This embodiment is depicted in and described with reference to at least Figures 3 and 4. “[A] a means for controlling automatic retrieval of rack equipment related information from at least one component comprising said rack equipment, wherein said rack equipment related information comprises rack equipment description information regarding at least said at least one component and includes an identification of equipment type of said at least one component of a rack of equipment,” as recited in Claim 17, is described at least by: system 300 and description retrieval module 321 of Figure 3; page 13, lines 15-25; page 9, lines 2-11; and computer system 400 of Figure 4; and page 15, lines 11-19. “[A] means for communicating said rack equipment related information for managing rack equipment while said rack equipment is in operation,” as recited in Claim 17, is described at least by: system 300 and communication link 330 of Figure 3; page 10, line 14 - page 11, line 2; page 11, line 19-page 12, line 14; network communications port 459 and communications bus 457 of system 400 of Figure 4; and page 15, lines 23-page 16, line 7. “[A] means for storing said rack equipment related information and instructions for implementing rack equipment information coordination,” as recited in Claim 17, is described at least by: system 300, equipment description information repository 311, and cross indexing component 313 of Figure 3; page 10, line 14-page 11, line 17; page 12, lines 4-14; computer system 400 memory 452, bulk storage 454, and processor 451 of Figure 4; and page 15, lines 11-22. “[A] means for processing information and instructions, wherein said means for processing information and instructions is configured for processing said instructions and for managing operating characteristics of said rack equipment, and is configured for processing information for managing said rack equipment information,” as

recited in Claim 17, is described at least by: system 300 and repository management component 320 of Figure 3; page 10, line 23-page 11, line 2; and page 12, lines 16-25.

VI. Grounds of Rejection to Be Reviewed on Appeal

1. Whether Claims 1-7 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent 6,366,919 to O’Kane, Jr. et al. (hereafter “O’Kane”).

2. Whether Claims 8-20 are anticipated under 35 U.S.C. § 102(b) by O’Kane.

3. Whether Claims 8-20 are unpatentable under 35 U.S.C. §103(a) over O’Kane in view of what the Office as characterized as Applicant Admitted Prior Art (“AAPA”) in paragraphs 004-007 of the application as filed (which seem to correlate to page 2, line 7 - page 4, line 18 of the specification as filed) or vice versa (per page 15, section 6 of the “Office Action” of 1/29/2010).

VII. Argument

1. Whether Claims 1-7 are unpatentable under 35 U.S.C. §103(a) over O’Kane.

The Appellants respectfully submit that the features recited in Claims 1-7 are patentable over the cited art for at least the following rationale.

Obviousness Requirements

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Appellants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Claims 1-7

Attention is directed to Independent Claim 1, which recites (emphasis added):

A computer-implemented rack equipment management information coordination method comprising:

formulating a rack equipment management plan that includes equipment management and usage policies and establishes an association between a rack equipment performance action and a trigger event, said formulating performed using a computer to analyze said equipment management and usage policies, wherein at least a portion of said equipment management and usage policies are automatically received by said computer from a customer database, and wherein said rack equipment management plan is a plan for managing rack equipment operating characteristics while said rack equipment is in operation;

automatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment description information comprises an identification of equipment type of said at least one component;
and

storing, with said computer, said rack equipment description information and said rack equipment management plan.

Appellants submit that O’Kane does not teach or suggest “automatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment description information comprises an identification of equipment type of said at least one component,” as is recited in Claim 1. Appellants understand that O’Kane may describe automatically determining and monitoring a power load on a rack (see col. 6, lines 40-53 of O’Kane). However, Appellants submit that the automatic monitoring of O’Kane only automatically monitors operating information (such as a temperature or DC power load). Appellants submit this is very different than, and does not teach or suggest, “automatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment description information comprises an identification of equipment type of said at least one component,” (emphasis added) as is recited in Claim 1. Furthermore, to any extent that O’Kane discusses population or retrieval of equipment operating information, such as equipment type, O’Kane indicates that such processes involve a survey request for manual collection and input of information. For example, O’Kane indicates:

The survey request imposes an acquisition of data by the technician as to a particular site 44 for insertion into the respective data bases. Either during or after the technician has visited the site 44 an electronic survey report 46 is prepared and forwarded via the network 24 to the computer 36 where the data is distributed into the appropriate databases...
O’Kane col. 4, lines 41-50.

It appears that this manual retrieval and population of equipment information is required to take place before any sort of monitoring can occur. Thus, per Appellants’ understanding, such manual retrieval and population of equipment information actually teaches away from “automatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment description information comprises an identification of equipment type of said at least one component,” (emphasis added) as is recited in Claim 1.

The Office Action also refers to retrieving data from databases such as 26 and 28 of O’Kane. However, Appellants submit that retrieving equipment information from a database is very different from, and does not teach or suggest, “automatically detecting and retrieving, with said computer, rack equipment description information from at least one component...” ,” as is recited in Claim 1. Moreover, per col. 7, line 64 - col. 8, line 36 of O’Kane, it appears to Appellants that any rack equipment description information that comprises “an identification of equipment type” would have been manually entered into such a database rather than automatically retrieved from the component as specified in Claim 1.

Finally, the Office Action refers to col. 6, lines 15-30 and lines 40-53; col. 1, lines 25-46; and Figures 1 and 5. However, again, Appellants submit that these cited portions refer to a) manual surveys and information uploaded by technicians (see col. 2, lines 25-27; col. 2,

lines 32-65; technician data 50 of Figure 1; battery data 108, temp. 104, humidity 106, and CFM 102 of Figure 5; col. 5, lines 14-28; and col. 7, line 66 - col. 8, line (“initially an engineering site survey is made and this includes an identification and determination of what racks are present at the sites ... equipment data is assembled at 25.5, this includes an identification of equipment installed at the sites 256 as well as in which racks 94(see FIG. 5) these are installed”); or b) automatic tracking of operational information such as a DC power load, temp., and humidity (see col. 6, lines 44-47 and Figure 5) which appears only to be accomplished in conjunction with or after a manual survey has been conducted (see e.g., col. 6, lines 31-41 which discusses the technician’s survey for the site). Appellants submit that retrieving equipment information by manual survey or retrieving information such as DC power load, temperature, or humidity only after a survey has provided initial data to identify equipment and capabilities is very different from, and does not teach or suggest, “automatically detecting and retrieving, with said computer, rack equipment description information from at least one component ... wherein said rack equipment description information comprises an identification of equipment type of said at least one component ,” (emphasis added) as is recited in Claim 1.

As such, Appellants submit that O’Kane fails to make a *prima facie* case of obviousness as not all of the features of Claim 1 are taught or suggested by O’Kane and as further as O’Kane actually teaches away from Appellants’ Claim 1 by requiring manual collection of information such as identification of equipment type. Additionally, and as required by the MPEP as cited above, the present Office Action fails to explain why the identified differences between Appellants’ claimed invention and O’Kane would have been obvious to one of ordinary skill in the art.

Accordingly, the Appellants submit that the rejection of Claim 1 under 35 U.S.C. §103(a) has been overcome as O’Kane does not teach all of the elements of Claim 1 and actually teaches away from Claim 1. Claims 2-7 depend from Claim 1 and recite additional features descriptive of embodiments of the present invention. Accordingly, the Appellants further submit that the rejection of Claims 2-7 under 35 U.S.C. §103(a) is also overcome at least by virtue of these claims depending from an allowable base claim. As such, Appellants submit that Claims 1-7 are in condition for allowance and respectfully request that the rejections of these Claims be reversed by the Board.

Discussion of Office Action’s Characterization of Claim Elements as

Non-Functional Descriptive Material

Appellants note that the Office Action has characterized portions of claim elements of Claim 1 as Non-Functional Descriptive Material (NFDM). The Office Action has cited to *In re Gulack* (703 F.2d 1381) in its contention that certain portions of the Appellants’ claims are non-functional descriptive material and thus “... can not render nonobvious an invention that would have other wise been obvious,” see page 14 of the Office Action. Appellants submit that *In re Gulack* also admonishes that:

Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter. Under section 103, the board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole. *In re Gulack*, 703 F.2d 1381, 1395.

Appellants respectfully submit that the Office Action has dissected Claim 1 by improperly categorizing certain portions as NFDM. For example, with respect to Claim 1, Appellants submit that the Office Action has improperly categorized and indicated that “... *the data or information such as ‘equipment management and usage policies, rack equipment performance action and a trigger event, an identification of equipment,’*” are NFDM (emphasis in original) see page 14 of the Office Action.

Appellants submit that the characterization is improper, because no analysis was provided other than an indication that Claim 1 appeared to be a data processing method (see page 14 of Office Action) and that “this information is just stored in the repository/database or storage” (see page 17 of Office Action). Appellants respectfully point out that Claim 1 is directed to a computer-implemented rack equipment management information coordination method. Appellants also point out that in Claim 1, while the description information is eventually stored, the particular equipment description information that comprises and identification of equipment type of at least one component first has to be automatically detected and retrieved from the at least one component. Thus, at minimum, what the Office Action has called “identification of equipment” is functionally related to what is automatically detected and retrieved from a component.

Moreover, per MPEP 2173.05(g):

A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971) ... A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.

In light of this discussion, Appellants respectfully request the Board to direct examination of all of the language of Claim 1.

2. Whether Claims 8-20 are anticipated under 35 U.S.C. § 102(b) by O’Kane.

Appellants have reviewed the cited art and respectfully submit that the embodiments of the present invention as recited in Claims 8-20 are not anticipated by O’Kane for at least the following reasons.

Anticipation Requirements

According to MPEP 2131, “to anticipate a claim, the reference must teach every element of the claim.” Further, as cited in MPEP 2131, “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Additionally, according to MPEP 2131, “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claims 8-16

200208654-1
Serial No.: 10/678,464

Group Art Unit: 3689

Attention is directed to Claim 8, which recites (emphasis added):

A rack equipment information coordination system comprising:
an equipment description information repository for tracking equipment description information, wherein said equipment description information comprises an identification of equipment type of at least one component of a rack of equipment, said equipment description information repository comprising physical bulk storage coupled with a computer;
a management plan information repository for tracking rack equipment management plan information, said management plan information repository comprising a second physical bulk storage coupled with said computer, wherein said rack equipment management plan information is used for managing rack equipment while said rack equipment is in operation and is configured for directing a change in operating characteristics of said rack equipment;
a coordination component for coordinating said equipment description information and said rack equipment management plan information, said coordination component comprising a processor of said computer programmed with instructions for performing said coordinating; and
a repository management component that controls automatic retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment, wherein said repository management component also controls population of said equipment description information into said equipment description information repository and population of said management plan information into said management plan information repository, said repository management component implemented by said processor of said computer which is programmed with instructions for performing said automatic retrieval and said population.

Appellants respectfully submit that the rejection of Claim 8 under 35 U.S.C. §102(b) is not proper, as the cited art does not meet the requirements set forth for anticipation (shown above) by the MPEP. Specifically, Appellants submit that O’Kane fails to anticipate Claim 8 and to meet the requirements for anticipation because it does not teach every element of Claim 8, as required by the MPEP.

For example, per Appellants’ understanding, O’Kane does not teach or suggest, either expressly or inherently, “a repository management component that controls automatic

retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment ...,” (emphasis added) as is recited in Claim 8. As is recited in Claim 8, equipment description information “... comprises an identification of equipment type of at least one component of a rack of equipment.” To the contrary, and as previously detailed with respect to the rejection of Claim 1, automatic retrieval in O’Kane (if performed) appears to be limited to retrieving operation information (see col. 6, lines 40-53 of O’Kane) such as a DC power load rather than equipment description information such as equipment type. Even still, this automated retrieval of O’Kane can apparently be accomplished only in conjunction with or following a manual site survey by technicians who identify equipment types and capabilities at a site (see e.g., col. 6, lines 31-41 of O’Kane).

Appellants submit that to any extent that O’Kane discusses population or retrieval of equipment description information, such as identification of equipment type, O’Kane indicates such retrieval processes involve a survey request for manual collection and input of information. For example, O’Kane indicates:

The survey request imposes an acquisition of data by the technician as to a particular site 44 for insertion into the respective data bases. Either during or after the technician has visited the site 44 an electronic survey report 46 is prepared and forwarded via the network 24 to the computer 36 where the data is distributed into the appropriate databases...
(O’Kane col. 4, lines 41-50).

Per Appellants’ understanding, such manual retrieval and population of equipment identification information such as equipment type is very different than “a repository management component that controls automatic retrieval of said equipment description

information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment ...,” (emphasis added) as is recited in Claim 8.

Accordingly, Appellants submit that the rejection of Claim 8 under 35 U.S.C. §102(b) is not supported by the cited art as O’Kane does not teach all of the elements of Claim 8. Claims 9-16 depend from Claim 8 and recite additional features descriptive of embodiments of the present invention. Appellants further submit that the rejection of Claims 9-16 under 35 U.S.C. §102(b) is also not supported by the cited art, at least by virtue of these claims depending from an allowable base claim. As such, Appellants submit that Claims 8-16 are in condition for allowance and that the rejections of these Claims under 35 U.S.C. §102(b) are improper and should be reversed.

Claims 17-20

Attention is directed to Claim 17, which recites (emphasis added):

A computer system comprising:

a means for controlling automatic retrieval of rack equipment related information from at least one component comprising said rack equipment, wherein said rack equipment related information comprises rack equipment description information regarding at least said at least one component and includes an identification of equipment type of said at least one component of a rack of equipment;

a means for communicating said rack equipment related information for managing rack equipment while said rack equipment is in operation;

a means for storing said rack equipment related information and instructions for implementing rack equipment information coordination; and

a means for processing information and instructions, wherein said means for processing information and instructions is configured for processing said instructions and for managing operating characteristics of said rack equipment, and is configured for processing information for managing said rack equipment information.

Appellants respectfully submit that the rejection of Claim 17 under 35 U.S.C. §102(b) is not proper, as the cited art does not meet the requirements set forth for anticipation (shown above) by the MPEP. Specifically, Appellants submit that O’Kane fails to anticipate Claim 17 and to meet the requirements for anticipation because it does not teach every element of Claim 17, as required by the MPEP.

For example, per Appellants’ understanding, O’Kane does not teach or suggest, either expressly or inherently, “a means for controlling automatic retrieval of rack equipment related information from at least one component ... wherein said rack equipment related information comprises rack equipment description information regarding at least said at least one component and includes an identification of equipment type of said at least one component,” as is recited in Claim 17. To the contrary, and as previously detailed with respect to the rejection of Claims 1 and 8, automatic retrieval in O’Kane (if performed) appears to be limited to retrieving operation information (see col. 6, lines 40-53 of O’Kane) such as a DC power load rather than equipment description information such as equipment type. Even still, this automated retrieval of O’Kane can apparently be accomplished only in conjunction with or following a manual site survey by technicians who identify equipment types and capabilities at a site (see e.g., col. 6, lines 31-41 of O’Kane).

Appellants submit that to any extent that O’Kane discusses population or retrieval of equipment description information, such as identification of equipment type, O’Kane indicates that such processes involve a manual survey request for manual collection and input of information. For example, O’Kane indicates:

The survey request imposes an acquisition of data by the technician as to a particular site 44 for insertion into the respective data bases. Either during or

after the technician has visited the site 44 an electronic survey report 46 is prepared and forwarded via the network 24 to the computer 36 where the data is distributed into the appropriate databases...
O’Kane col. 4, lines 41-50.

Per Appellants’ understanding, such manual retrieval and population of equipment information, such as equipment type, is very different than “a means for controlling automatic retrieval of rack equipment related information from at least one component ... wherein said rack equipment related information comprises rack equipment description information regarding at least said at least one component and includes an identification of equipment type of said at least one component,” (emphasis added) as is recited in Claim 17.

Accordingly, the Appellants submit that the rejection of Claim 17 under 35 U.S.C. §102(b) is not supported by the cited art as O’Kane does not teach all of the elements of Claim 17. Claims 18-20 depend from Claim 17 and recite additional features descriptive of embodiments of the present invention. Appellants further submit that the rejection of Claims 18-20 under 35 U.S.C. §102(b) is also not supported by the cited art at least by virtue of these claims depending from an allowable base claim. As such, Appellants submit that Claims 17-20 are in condition for allowance and that the rejections of these Claims under 35 U.S.C. §102(b) are improper and should be reversed.

Discussion of Office Action’s Characterization of Claim Elements as
Non-Functional Descriptive Material

With respect to Claim 8-20, Appellants note that the Office Action has characterized portions of claim elements as Non-Functional Descriptive Material (NFD). The Office Action has cited to *In re Gulack* (703 F.2d 1381) in its contention that certain portions of the Appellants’ claims are non-functional descriptive material and thus “... can not render

nonobvious an invention that would have other wise been obvious,” see page 5, page 9 and page 17-18 of the Office Action. Appellants submit that *In re Gulack* also admonishes that:

Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter. Under section 103, the board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole. *In re Gulack*, 703 F.2d 1381, 1395.

Appellants respectfully submit that the Office Action has dissected Claims 8 and 17 by improperly categorizing certain portions as NFDM. For example, with respect to Claims 8 and 17 the Office Action has improperly indicated categorized and indicated that the data or information such as “*equipment description information, identification equipment type, equipment management plan information*” and “*wherein said equipment descriptive information comprises an identification of equipment type... rack of equipment*,” are NFDM (emphasis in original) see pages 5, 9, and similarly pages 17-18 of the Office Action.

Appellants submit that the characterization is improper, because no analysis was provided other than an indication that Claim 17 appeared to be a data processing method (see page 9 of the Office Action). Appellants respectfully submit that at least the following two factors should be considered. First, Appellants point out that Claim 8 is directed to a rack equipment coordination system and Claim 17 is directed to a computer system, neither of which is a data processing method as contended by the Office Action. Second, Claim 17 is a means + function type claim and the excised language is descriptive of the function of the means. That is to say, one of Claim 17’s elements is “a means for controlling automatic retrieval of ... an identification of equipment type of said at least one component of a rack of equipment,” (emphasis added). As such, Appellants submit that this underlined portion of Claim 17 is not NFDM as it describes the function of the means. Similarly, Appellants

submit that the excised portion of Claim 8 also describes the function of the “repository management component” that is recited in Claim 8.

Moreover, per MPEP 2173.05(g):

A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971) ... A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.

In light of this discussion, Appellants respectfully request the Board to direct examination of all of the language of Claims 8 and 17.

3. Whether Claims 8-20 are unpatentable under 35 U.S.C. §103(a) over O’Kane in view of AAPA or vice versa.

The Appellants respectfully submit that the features recited in Claims 8-20 are patentable over the cited art for at least the following rationale.

Attention is directed to Claim 8, which recites (emphasis added):

A rack equipment information coordination system comprising:
an equipment description information repository for tracking equipment description information, wherein said equipment description information comprises an identification of equipment type of at least one component of a rack of equipment, said equipment description information repository comprising physical bulk storage coupled with a computer;
a management plan information repository for tracking rack equipment management plan information, said management plan information repository comprising a second physical bulk storage coupled with said computer, wherein said rack equipment management plan information is used for managing rack equipment while said rack equipment is in operation and is

configured for directing a change in operating characteristics of said rack equipment;

a coordination component for coordinating said equipment description information and said rack equipment management plan information, said coordination component comprising a processor of said computer programmed with instructions for performing said coordinating; and

a repository management component that controls automatic retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment, wherein said repository management component also controls population of said equipment description information into said equipment description information repository and population of said management plan information into said management plan information repository, said repository management component implemented by said processor of said computer which is programmed with instructions for performing said automatic retrieval and said population.

Claims 9-16 depend from Claim 8 and recite further features thereof. Claim 17 includes some similar features to those of Claim 8 and was rejected with similar rationale to that used in rejecting Claim 8. Claims 18-20 depend from Claim 17 and recite further features thereof.

Appellants respectfully submit that the rejection of Claims 8 and 17 under 35 U.S.C. §103(a) is not proper, as the cited art does not meet the requirements set forth for obviousness (shown above near discussion of Claim 1) by the MPEP. Specifically, Appellants submit that O’Kane fails to render Claim 8 or Claim 17 as obvious because it does not teach or suggest every element of Claim 8 or of Claim 17 and the Office Action fails to describe why one of ordinary skill in the art would have found the Claims obvious in spite of these failures of the O’Kane art and AAPA.

For example, per Appellants' understanding, O'Kane does not teach or suggest or otherwise render obvious, "a repository management component that controls automatic retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment ...," (emphasis added) as is recited in Claim 8 and similarly in Claim 17. As is recited in Claim 8 and similarly in Claim 17, equipment description information "... comprises an identification of equipment type of at least one component of a rack of equipment." Instead, automatic retrieval in O'Kane (if performed) appears to be limited to retrieving operation information (see col. 6, lines 40-53 of O'Kane) such as a DC power load rather than equipment description information such as equipment type. Even still, this automated retrieval of O'Kane can apparently be accomplished only in conjunction with or following a manual site survey by technicians who identify equipment types and capabilities at a site (see e.g., col. 6, lines 31-41 of O'Kane). Appellants submit that a manual identification of equipment type of a component would teach away from the claimed automated retrieval of equipment identification information.

Appellants submit that to any extent that O'Kane discusses population or retrieval of equipment description information, such as identification of equipment type, O'Kane indicates such retrieval processes involve a survey request for manual collection and input of information. For example, O'Kane indicates:

The survey request imposes an acquisition of data by the technician as to a particular site 44 for insertion into the respective data bases. Either during or after the technician has visited the site 44 an electronic survey report 46 is prepared and forwarded via the network 24 to the computer 36 where the data is distributed into the appropriate databases... (O'Kane col. 4, lines 41-50).

Per Appellants' understanding, such manual retrieval and population of equipment identification information such as equipment type does not teach or suggest "... automatic retrieval of said equipment description information ... such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment ...," (emphasis added) as is recited in Claim 8 and similarly in Claim 17. Indeed, Appellants submit that such manual retrieval teaches away from these claim features of Claims 8 and 17.

Appellants submit that what has been characterized as AAPA does nothing to cure this deficiency of O'Kane and that neither AAPA in view of O'Kane or O'Kane in view of AAPA teaches or suggests the above discussed features of Claims 8 and 17. Indeed, paragraphs 005 and 007 (page 2, line 23-page 3, line 7 and page 4, lines 18), which have been characterized as portions of AAPA, discuss the manual collecting and correlating of rack equipment information. Thus, it would appear that the inclusion of AAPA in combination with O'Kane only further exacerbates the teaching away of O'Kane

As such, Appellants submit that O'Kane in view of AAPA fails to make a *prima facie* case of obviousness as not all of the features of Claim 8 or Claim 17 are taught or suggested by O'Kane in view of AAPA and further as O'Kane in view of AAPA actually teaches away from Appellants' Claims 8 and 17 by requiring manual collection of information such as identification of equipment type. Additionally, and as required by the MPEP as cited above, the present Office Action fails to explain why the identified differences between Appellants'

claimed invention and O’Kane in view of AAPA (or vice versa) would have been obvious to one of ordinary skill in the art.

Accordingly, the Appellants submit that the rejections of Claim 8 and Claim 17 under 35 U.S.C. §103(a) has been overcome as O’Kane in view of AAPA (or vice versa) does not teach all of the elements of Claim 8 or Claim 17 and actually teaches away from both Claim 8 and Claim 17. Claims 9-16 depend from Claim 8 and Claims 18-20 depend from Claim 17. Accordingly, Appellants further submit that the rejection of Claims 9-16 and 18-20 under 35 U.S.C. §103(a) is also overcome at least by virtue of these claims depending from an allowable base claim. As such, Appellants submit that Claims 8-16 and 17-20 are in condition for allowance and respectfully request that the rejections of these Claims be reversed by the Board.

Conclusion

The Appellants believe that pending Claims 1-20 are patentable over the cited art. Appellants respectfully request that the Board reverse the rejection of Claims 1-20.

The Appellants wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellants' undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,
WAGNER BLECHER LLP

Dated: 05/28/2010

/John P. Wagner, Jr./

John P. Wagner, Jr.
Registration No.: 35,398

WAGNER BLECHER LLP
Westridge Business Park
123 Westridge Drive
Watsonville, CA 95076

Phone: (408) 377-0500

VIII. Appendix - Clean Copy of Claims on Appeal

1. A computer-implemented rack equipment management information coordination method comprising:

formulating a rack equipment management plan that includes equipment management and usage policies and establishes an association between a rack equipment performance action and a trigger event, said formulating performed using a computer to analyze said equipment management and usage policies, wherein at least a portion of said equipment management and usage policies are automatically received by said computer from a customer database, and wherein said rack equipment management plan is a plan for managing rack equipment operating characteristics while said rack equipment is in operation;

automatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment description information comprises an identification of equipment type of said at least one component; and

storing, with said computer, said rack equipment description information and said rack equipment management plan.

2. The computer-implemented rack equipment information coordination method of Claim 1 further comprising using said computer for retrieving possible performance level settings from rack equipment.

3. The computer-implemented rack equipment information coordination method of Claim 2 wherein said possible performance level settings from rack equipment include wattage settings.

4. The computer-implemented rack equipment information coordination method of Claim 1 wherein said rack equipment management plan includes management objective guidelines.
5. The computer-implemented rack equipment information coordination method of Claim 1 wherein said rack equipment management plan includes power and thermal budget guidelines.
6. The computer-implemented rack equipment information coordination method of Claim 1 wherein formulating said rack equipment management plan further comprises using said computer for interfacing with a service agreement application.
7. The computer-implemented rack equipment information coordination method of Claim 1 further comprising using said computer for integrating said rack equipment description information with said rack equipment management plan.
8. A rack equipment information coordination system comprising:
 - an equipment description information repository for tracking equipment description information, wherein said equipment description information comprises an identification of equipment type of at least one component of a rack of equipment, said equipment description information repository comprising physical bulk storage coupled with a computer;
 - a management plan information repository for tracking rack equipment management plan information, said management plan information repository comprising a second physical

bulk storage coupled with said computer, wherein said rack equipment management plan information is used for managing rack equipment while said rack equipment is in operation and is configured for directing a change in operating characteristics of said rack equipment;

a coordination component for coordinating said equipment description information and said rack equipment management plan information, said coordination component implemented by a processor of said computer which is programmed with instructions for performing said coordinating; and

a repository management component that controls automatic retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment, wherein said repository management component also controls population of said equipment description information into said equipment description information repository and population of said management plan information into said management plan information repository, said repository management component implemented by said processor of said computer which is programmed with instructions for performing said automatic retrieval and said population.

9. A rack equipment information coordination system of Claim 8 wherein said equipment description information repository stores information associated with features and characteristics of rack equipment and support equipment.

10. A rack equipment information coordination system of Claim 8 wherein said equipment description information repository stores information indicating possible operation settings of rack equipment.

11. A rack equipment information coordination system of Claim 8 wherein said equipment description information repository stores information indicating rack equipment is capable of operating at varying power levels and corresponding heat generated at each level.
12. A rack equipment information coordination system of Claim 8 wherein said equipment description information repository stores performance level information.
13. A rack equipment information coordination system of Claim 8 wherein said management plan information repository tracks management policy and guideline information associated with a rack equipment management plan.
14. A rack equipment information coordination system of Claim 8 wherein policy information can provide a correlation between a trigger event and a rack equipment management objective.
15. A rack equipment information coordination system of Claim 8 wherein said coordination component provides a correlation between policies associated with a particular client and rack equipment implementing the client's applications.
16. A rack equipment information coordination system of Claim 8 further comprising:
 - a second repository management component for managing information flow to and from said equipment description information repository and said management plan information repository; and

a communication link for communicating information to and from said repository management component.

17. A computer system comprising:

a means for controlling automatic retrieval of rack equipment related information from at least one component comprising said rack equipment, wherein said rack equipment related information comprises rack equipment description information regarding at least said at least one component and includes an identification of equipment type of said at least one component of a rack of equipment;

a means for communicating said rack equipment related information for managing rack equipment while said rack equipment is in operation;

a means for storing said rack equipment related information and instructions for implementing rack equipment information coordination; and

a means for processing information and instructions, wherein said means for processing information and instructions is configured for processing said instructions and for managing operating characteristics of said rack equipment, and is configured for processing information for managing said rack equipment information.

18. A computer system of Claim 17 further comprising:

a rack equipment management plan module for directing establishment of a rack equipment management plan;

a rack equipment correlation module for providing correlation instructions to a correlation component; and

an instruction saving module for directing rack equipment description information and the rack equipment management plan information saving operations.

19. A computer system of Claim 18 wherein said rack equipment management plan module facilitates determination of rack equipment management objectives.

20. A computer system of Claim 18 wherein said rack equipment management information coordination is utilized to support a variety of rack equipment management objectives.

IX. Evidence Appendix

No evidence is herein appended.

X. Related Proceedings Appendix

No related proceedings.